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8 *Attorneys for Defendant State of California*  
9 *(by and through the California Highway Patrol)*  
10 *[erroneously sued as "State of California"]*  
*and Michael Bell*

11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
13  
14  
15

16 **EDGAR SOLIS,**

17 Plaintiff,

18 v.

19 **COUNTY OF RIVERSIDE; STATE**  
20 **OF CALIFORNIA; SALVADOR**  
21 **WALTERMIRE; and DOES 1-10,**  
**inclusive,**

22 Defendants.

5:23-cv-00515-HDV-JPR

**DEFENDANTS' NOTICE OF  
MOTION AND MOTION IN  
LIMINE NO. 1 TO EXCLUDE  
EVIDENCE OF OFFICERS'  
PERSONNEL RECORDS;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

23 Date: October 1, 2024  
24 Time: 10 a.m.  
Courtroom: 5B  
25 Judge: *Honorable Hernán D.  
Vera*  
Trial Date: October 29, 2024  
Action Filed: 2/02/2023

**TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD**

**HEREIN: PLEASE TAKE NOTICE THAT** on October 1, 2024, at 10:00 a.m. or as soon thereafter as counsel may be heard in in Courtroom 5B of the United States District Court located at 350 W. 1<sup>st</sup> Street, Courtroom 5B, 5<sup>th</sup> Floor, Los Angeles, California, State of California (by and through the California Highway Patrol) *and* Michael Bell will and hereby do move the Court for an order in limine precluding plaintiffs and plaintiffs' counsel, and through them, each and every one of their witnesses from mentioning, or in any other manner convey to the jury any testimony relating to personnel matters, prior complaints concerning job performance, or prior disciplinary issues regarding Defendant Bell or any officer who testifies in this matter on the grounds that such evidence is privileged, not relevant and unduly prejudicial. Fed. R. Evid. 401, 402, 403, and 404.

This motion is based upon this notice of motion, the attached memorandum of points and authorities, the attached declaration of David Klehm, all pleadings and records on file in this action, and on such further authority, evidence, or argument as may be presented at or before the time of any hearing on this motion.

This Motion is made following a conference of counsel pursuant to L.R. 7-3 and L.R. 16-2.6, which took place on September 5, 2024.

Dated: September 10, 2024 \_

Respectfully submitted,

ROB BONTA  
Attorney General of California  
NORMAN D. MORRISON  
Supervising Deputy Attorney General

/s/ David Klehm

DAVID KLEHM  
Deputy Attorney General  
*Attorneys for Defendants  
State of California and Andrew  
Ornelas*

1                   **MEMORANDUM OF POINTS AND AUTHORITIES**  
2                   **INTRODUCTION**

3           This lawsuit arises out of the shooting of Plaintiff Edgar Solis by California  
4 Highway Patrol (CHP) Officer Michael Bell. The central issue in this case is  
5 whether Defendant Bell was justified in using deadly force when Plaintiff  
6 unlawfully evaded lawful arrest and pointed his gun at Officer Bell. Defendants  
7 request that the court exclude evidence regarding the officers' personnel records on  
8 the grounds that such evidence is not relevant and is unduly prejudicial and  
9 confusing. Fed. R. Evid. 401, 402, 403, and 404.

10                   **ARGUMENT**

11           **I. THE COURT HAS THE POWER TO GRANT THIS MOTION IN LIMINE BASED UPON**  
12           **ITS INHERENT POWER TO MANAGE THE COURSE OF TRIALS**

13           Motions in limine are recognized as a proper pretrial request, both in practice  
14 and by case law. *See, Ohler v. United States*, 529 U.S. 753, 758 (2000); and *United*  
15 *States v. Cook*, 608 F.2d 1175, 1186 (9th Cir. 1979). Authority for these motions is  
16 also derived from the Court's inherent power to manage the course of trials. *See,*  
17 *Luce v. United States*, 469 U.S. 38, 41 (1984). Pursuant to the arguments set forth  
18 below, defendants request that this Court grant their motion and exclude the  
19 evidence at issue.

20           **II. EVIDENCE REGARDING OFFICERS' PERSONNEL RECORDS SHOULD BE**  
21           **EXCLUDED BECAUSE IT IS PRIVILEGED, IRRELEVANT AND PREJUDICIAL TO**  
22           **DEFENDANTS**

23           Defendants request that this Court preclude any questioning and testimony  
24 regarding the officers' personnel matters, prior complaints concerning job  
25 performance, or prior disciplinary issues. Further, defendants request that the Court  
26 preclude such questions and testimony regarding any officer who testifies in this  
27 matter.

28           Although federal courts are not bound by state statutes or privileges, federal  
common law recognizes an "official information" privilege that embraces records  
or information compiled for law enforcement purposes not otherwise available to

1 the public pursuant to 5 U.S.C. § 552(b)(7). *Kerr v. United States Dist. Court for*  
2 *Northern Dist. of California*, 511 F.2d 192, 198 (9th Cir. 1975); *Sanchez v. City of*  
3 *Santa Ana*, 936 F.2d 1027, 1033-34 (9th Cir. 1990); *Miller v. Pancucci*, 141 F.R.D.  
4 292, 297-298 (C.D. Cal. 1992); *Stallworth v. Brollini*, 288 F.R.D. 439, 444 (N.D.  
5 Cal. 2012). In section 1983 cases, with mixed state and federal claims, although  
6 federal law is binding, state privilege law which is consistent with its federal  
7 equivalent significantly assists in applying privilege law to discovery disputes.  
8 *Brooks v. County of San Joaquin*, 275 F.R.D 528, 530 (E.D. Cal. 2011). The Court  
9 in *Brooks* acknowledged that while other courts, disagree (*see e.g. Jackson v.*  
10 *County of Sacramento*, 175 F.R.D 653, 655 (E.D. Cal. 1997), these other Courts  
11 seemingly have overlooked binding precedent. The Ninth Circuit continues to hold  
12 that “[i]n determining the federal law of privilege in a federal question case, absent  
13 controlling statute, a federal court may consider state privilege law.” *Brooks*, 132  
14 F.R.D at 530, citing *Lewis v. United States*, 517 F.2d 236, 237 (9th Cir. 1975).

15 The *Brooks* court stated that the federal privilege applicable to the government  
16 interest in preserving confidentiality of law enforcement records has various names:  
17 (1) the “official information privilege,” (2) the “law enforcement privilege,” and (3)  
18 a type of “executive privilege.” The Court went on to state that this federal  
19 “qualified” privilege is consistent with California statutes affording a qualified  
20 privilege to peace officer personnel records, i.e. California Penal Code section  
21 832.7. Disclosure requires “good cause” (Cal. Evid. Code § 1043), relevance and  
22 unavailability by other means (Cal. Evid. Code § 1045). *Brooks*, 132 F.R.D at 533.  
23 Further, even where a claim is based on federal law rather than state law, federal  
24 courts may defer to state law privilege as a matter of comity (i.e., not as a matter of  
25 obligation, but out of deference and mutual respect.) *Pearson v. Miller*, 211 F.3d  
26 57, 67 (3rd Cir. 2000).

27 With limited exceptions, California Penal Code section 832.7 provides for the  
28 confidentiality of peace officer personnel records. This includes personnel records

1 defined under Penal Code section 832.8, and records maintained pursuant to Penal  
2 Code section 832.5. Penal Code section 832.8 defines personnel records as  
3 ... any file maintained under that individual's name by his or her employing  
4 agency and containing records relating to any of the following:

5 (1) Personal data, including marital status, family members, educational and  
6 employment history, home addresses, or similar information.

7 (2) Medical history.

8 (3) Election of employee benefits.

9 (4) Employee advancement, appraisal, or discipline.

10 (5) Complaints, or investigations of complaints, concerning an event or  
11 transaction in which he or she participated, or which he or she perceived, and  
12 pertaining to the manner in which he or she performed his or her duties.

13 (6) Any other information the disclosure of which would constitute an  
14 unwarranted invasion of personal privacy.

15 *Cal. Pen. Code* § 832.8(a).

16 Penal Code section 832.5 applies to procedures for investigating citizen  
17 complaints against law enforcement personnel, *i.e.*, an internal affairs investigation.  
18 Evidence Code section 1040 is a privilege relating to official information acquired  
19 in confidence from a public employee in the course of his or her duty and not open  
20 or officially disclosed to the public prior to the time the claim of privilege is made.  
21 A public entity has a confidential privilege to refuse to disclose official information  
22 and to prevent another person from disclosing such information if: (1) the privilege  
23 is claimed by a person authorized by the public entity to do so; and (2) disclosure of  
24 the information is against the public interest because there is a necessity for  
25 preserving the confidentiality of the information that outweighs the necessity for  
26 disclosure in the interest of justice. *Shepherd v. Superior Court*, 17 Cal.3d 107, 124  
27 (1976), *overruled on other grounds*, *People v. Holloway*, 33 Cal.4th 296 (2004).

28 Thus, plaintiff should not be entitled to ask questions soliciting information

1 otherwise privileged because statutes which protect personnel records and  
2 information from such records also protect the identical information about  
3 personnel history which is within the officers' personal recollections. *City of San*  
4 *Diego v. Superior Court*, 136 Cal.App.3d 236, 239 (1981).

5 Further, only relevant evidence is admissible. Fed. R. Evid. Rule 402.  
6 Evidence is not relevant unless it tends to prove or disprove a fact of consequence.  
7 Fed. R. Evid. Rule 401. Evidence of other citizen complaints or internal affairs  
8 investigations would be irrelevant since they do not prove any fact of consequence  
9 in this matter. Moreover, such character evidence is not admissible to prove  
10 conduct of a defendant (Fed. R. Evid. Rule 404), and admission of any such  
11 evidence would be unduly prejudicial and subject to exclusion (Fed. R. Evid. Rule  
12 403).

### 13 CONCLUSION

14 Based on the foregoing, defendants respectfully request the Court to instruct  
15 plaintiffs and their attorneys (and through each of them, each of their witnesses and  
16 experts) not to mention, or in any other manner convey to the jury any testimony  
17 relating to personnel matters, prior complaints concerning job performance, or prior  
18 disciplinary issues regarding Defendant Bell. Further, defendants request that the  
19 Court preclude such questions and testimony regarding any officer who testifies in  
20 this matter.

21 Dated: September 10, 2024 \_

Respectfully submitted,

22 ROB BONTA  
23 Attorney General of California  
24 NORMAN D. MORRISON  
25 Supervising Deputy Attorney General

26 /s/ David Klehm

27 DAVID KLEHM  
28 Deputy Attorney General  
*Attorneys for Defendants*  
*State of California and Michael Bell*

**CERTIFICATE OF SERVICE**

Case Name: **Edgar Solis v. County of  
Riverside, et al.** No. **5:23-cv-00515-HDV-JPR**

I hereby certify that on September 10, 2024, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**DEFENDANTS' NOTICE OF MOTION AND MOTION IN LIMINE NO.  
1 TO EXCLUDE EVIDENCE OF OFFICERS' PERSONNEL RECORDS;  
MEMORANDUM OF POINTS AND AUTHORITIES**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on September 10, 2024, at Los Angeles, California.

J. Sissov  
Declarant

/s/ J. Sissov  
Signature

SD2023800661